

**HEARING BEFORE A PANEL
OF THE BOARD OF
ALBERTA GAMING, LIQUOR AND CANNABIS COMMISSION**

**IN THE MATTER OF the *Gaming, Liquor and Cannabis Act*
Revised Statutes of Alberta 2000, Chapter G-1, as amended
and the Regulation**

and

**Century Mile Inc.
o/a Century Mile Racetrack and Casino (Applicant)**

and

**United Horsemen of Alberta Inc.
o/a Century Downs Racetrack and Casino (Applicant)**

**c/o Field Law
#2500, 10175 101 Street NW
Edmonton AB, T5J 0H3**

DATE OF HEARING:	March 18, 2022
HEARING PANEL:	Len Rhodes, Presiding Member Patti Grier, Panel Member Vincent Vavrek, Panel Member
APPLICANTS' REPRESENTATIVE:	Gregory Sim, Legal Counsel Britt Tetz, Legal Counsel Geoff Smith, Director
REGULATORY SERVICES DIVISION:	Celina Chan, Legal Counsel Rebecca Lee, Legal Counsel Glen Arnston, Resource Officer

DECISION OF THE HEARING PANEL

In accordance with Sections 94(2) and 94(7)(a) of the *Gaming, Liquor and Cannabis Act* (the Act), the Panel confirms the original decision of the Board of the Alberta Gaming, Liquor and Cannabis Commission (AGLC) to deny the applications from Century Mile Inc., operating as Century Mile Racetrack and Casino, and United Horsemen of Alberta Inc., operating as Century Downs Racetrack and Casino (Century Casinos) and refuse to issue casino licences to transition their Racing Entertainment Centres (RECs) to full service casinos with the addition of live table games.

I. Jurisdiction and Preliminary Matters

[1] On February 23, 2021, Century Casinos submitted a proposal to AGLC to convert two of its existing RECs to casinos by adding live table games. The two RECs are owned by distinct, incorporated entities, namely: Century Mile Inc. and United Horsemen of Alberta Inc.

[2] Upon receipt of the proposal, the Compliance Audit sector of the Regulatory Services Division of AGLC initiated the assessment of the two applications and communicated with the Applicants throughout the process. The Regulatory Services Division brought the application materials forward to the Board for consideration at Step 2 of the three-step process on November 18, 2021.

[3] By letter dated November 22, 2021, the Chair of the Board of AGLC advised Century Casinos of the Board's decision to discontinue the applications for the enhancement of the two RECs.

[4] The Applicants subsequently each applied for a hearing before a Panel of the Board of AGLC pursuant to Section 94(2) of the Act. As each REC was considered separately in the application for licensing process, both operators are entitled to a hearing.

[5] The Applicants and the Regulatory Services Division agreed that both applications for a hearing before a Panel of the Board could be addressed simultaneously in one hearing.

[6] The parties and the Hearing Panel were provided with a record containing various documents pertaining to the issues before the Panel. The parties confirmed receipt of the Notice of Hearing dated January 20, 2022 and the attached hearing record.

[7] The parties elected to provide written submissions and documentary evidence for the participants and Panel to consider in advance of the hearing. The following documents were entered into evidence:

- Exhibit 1 Hearing Record of Regulatory Services, including Tabs 1 to 9
- Exhibit 2 Hearing Record of the Applicants, including Tabs A1-A19 and Tabs B1-B4
- Exhibit 3 Written Submissions of the Regulatory Services Division
- Exhibit 4 Written Submissions of the Applicants
- Exhibit 5 Response Submissions of the Applicants

II. Issues

[8] Should the decision by the Board of AGLC to discontinue the advancement of the two applications for addition of table games to the existing RECs be confirmed, replaced, or cancelled?

III. Regulatory Services Division Evidence

[9] The Regulatory Services Division did not call any witnesses, as agreed between the parties as a result of having exchanged documentary evidence in advance. Celina Chan, DDC Lawyers LLP, provided

written evidence (Exhibits 1 and 3) on behalf of the Regulatory Services Division and spoke to those submissions at the hearing.

[10] Prior to the receipt of the proposal from Century Casinos on February 23, 2021 (Exhibit 1, Tab 3 and Exhibit 2, Tab A4), the Regulatory Services Division had never considered an application to transition a REC to a full-service casino; this was a novel application.

[11] The Resource Officer at the hearing, Glen Arnston, advised the Panel that the Vice President of Regulatory Services, Dave Berry, and Director of Audit Services, Stephen Kiss, spoke with Geoff Smith, Director of Century Casinos, upon receipt of the proposal. Mr. Smith was advised that there was no specific section in the governing policy, the Casino Terms & Conditions and Operating Guidelines (CTCOG), or in the Gaming, Liquor and Cannabis Regulation (the Regulation) developed for the type of enhancement their proposal outlined.

[12] The Regulatory Services Division wished to provide Century Casinos fair opportunity to have their applications considered and elected to use Section 15.2 of the CTCOG, "Expansion of a Casino Facility," to guide the assessment. The Regulatory Services Division initiated Step 1 of the three-step process: Initial Assessment.

[13] Regulatory Services advised the Panel that Century Casinos was made aware throughout the process of the Regulatory Services Division's intent to apply Section 15.2 in a best fit approach, relying on that section whenever possible.

[14] During Step 1, the Regulatory Services Division identified concerns relating to the potential financial impact and cannibalization that would occur as a result of the REC enhancements. There were significant concerns about the financial impact of slot revenues to AGLC and to the Government of Alberta (GoA). From the perspective of the GoA, there were no monetary gains over three years, only losses, due to new involvement of charities at the RECs.

[15] AGLC also had significant concerns about cannibalization of proposed gaming revenues. From an operator's perspective, Century Casinos would have gained the most from the addition of live table games while other operators would see gaming revenue losses and urban charities would also see declines.

[16] Despite these drawbacks, pursuant to Section 15.2.9, the applications were determined to have merit based on the initial assessment and Step 2: Community Support, was initiated.

[17] As submitted by Regulatory Services, Section 15.2.13 of the CTCOG provides for consideration of views of the community. Under the CTCOG, community refers to municipalities, a Metis Settlement, an Indian Reserve or a council. The CTCOG provides a narrow definition of community and does not specify the geographical location nor the market area nor does it specifically preclude the views from the operators.

[18] Section 3 and 4 of the Regulation allow AGLC the discretion to notify a community where a licence or registration would have effect and allow for a broader interpretation of “community.” Under those sections, community is a geographical location determined by the Commission and any person may submit an objection to an application for a licence.

[19] Sections 1.3.9 to 1.3.15 of the CTCOG only set out the terms pertaining to objections for new casino facilities or existing casino facilities, respectively. These sections of the CTCOG do not deal with the communities from where objections can be obtained but rather provide guidance for when and how objections to licence applications should be received. Regulatory Services noted the applications from Century Casinos did not fall squarely within either the new casino facility or an existing casino facility category. The applications depict a hybrid of a casino licence and a gaming licence.

[20] The purpose of Sections 3 and 4 of the Regulation is to afford the Regulatory Services Division of AGLC the discretion to consider community objections. It also fits within the legislative purpose of AGLC which is to act in the best interest of the public, including stakeholders and operators.

[21] Regulatory Services stated that to disallow any person to submit an objection would defeat the very purpose of AGLC and its underlying responsibilities.

[22] The Regulatory Services Division received a number of objections to the Century Casinos applications from the gaming community, a summary of which was provided to the Applicants (Exhibit 1, Tab 9). The Applicants were provided the opportunity to respond to the objections, which they did, and such responses were considered by the Regulatory Services Division. Some operators pointed out many of the same concerns that the Regulatory Services Division identified in their initial assessment in Step 1.

[23] The Regulatory Services Division accepted objections from some smaller, miscellaneous communities as well as from operators in the following large communities as it was determined by the Regulatory Services Division that these geographic locations are within the communities of the respective RECs and their market areas:

- Edmonton
- Wetaskiwin
- Cold Lake
- Enoch
- Red Deer
- Calgary
- Maskwacis
- Fort McMurray
- Grande Prairie
- Leduc

[24] Historically, the Regulatory Services Division has posted notices of pending applications on the AGLC website and requires the Applicants to post notice of their application in local newspapers. The purpose of posting notices is to reach the affected communities to provide them notice of new

applications. More recently, the Regulatory Services Division has adopted the practice of notifying the operators directly. This falls under the authority of AGLC and fits within the overarching scheme of acting in the public's best interest. For these applications, Regulatory Services notified operators directly as well as posting a notice on the AGLC website while the Applicants post notification in newspapers.

[25] The Applicants were aware of this notice practice from the outset of the application process. The Applicants themselves even made use of the practice when they provided an objection to an application for relocation by another operator in January 2020 when Century Casinos received notice of the same.

[26] The application materials including the community objections and Applicant's responses were presented to the Board and the Board decided that the applications should not proceed to Step 3: Approval. The Board provided reasons for its decision in its decision letter of November 22, 2021 (Exhibit 1, Tab 2).

[27] Section 15.2 of the CTCOG, at Sections 15.2.11, 15.2.20, 15.2.25, sets out the discretion of AGLC to decide to conclude the approval process at any point.

[28] Step 1 of the process is an initial assessment to weed out the applications that have no merit. The CTCOG clearly sets out that just because the Regulatory Services Division finds merit in an application, does not mean that the application will ultimately be approved. The Regulatory Services Division has highlighted to the Applicants throughout the application process the drawbacks pertaining to financial impact and cannibalization, even during Step 1.

[29] The sequential nature of the CTCOG is a guideline for the steps an application must complete during the application process. There is nothing in the CTCOG, the Regulation or the Act that precludes the Regulatory Services Division or the Board of AGLC from considering all factors during the application process. The Regulatory Services Division must consider all factors and impacts on the public and stakeholders to make a wholesome decision. Regulatory Services advised the Panel it would be of no value for AGLC to consider community objections under Step 2 in a vacuum, especially when the drawbacks that the Regulatory Services Division identified in Step 1 also formed part of the community objections in Step 2.

[30] The Regulatory Services Division asserts that the Act, the Regulation and the CTCOG should be read as a whole and not be construed narrowly. Section 1.2.1 of the CTCOG notes that all licensees and registered service providers must operate in accordance with the Act, Regulation and Board policies.

[31] AGLC has the authority, whether expressed or implied, to control their own procedure as long as it does not conflict with the Act and Regulation and as long as it is necessary to carry out its functions.

[32] The Regulatory Services Division submits that if the terms contained in Section 15.2 of the CTCOG should have been the only guidance applied to the assessment of Century Casinos' applications and that it must be read narrowly, separate and apart from the Act and Regulation, then the Applicants should not have been afforded the opportunity to apply for a hearing before a Panel of the Board as

governed by Section 94 the Act. It is only when the CTCOG, the Regulation and the Act are read as a whole that the hearing process for the denial of the applications becomes possible.

[33] Section 15.2.27 provides applicants the opportunity to appeal a decision rendered by the Vice President of the Regulatory Services Division and to the Chief Executive Officer of AGLC, which they did. Without referring to the Regulation and Act, the options for appeal of the Board's decision as outlined in Section 15.2.27 have been exhausted.

[34] The Regulatory Services Division denies that there were any departures from the CTCOG and AGLC policies, however, any steps taken that have been interpreted by the Applicants to be a departure from or abuse of process have been explained and were done with the public's best interest in mind and to give procedural fairness to the Applicants.

[35] The Regulatory Services Division disagrees that there was any marked departure during the approval process and past practices. There was no abuse of process, no abuse of discretion or bad faith on the part of the Regulatory Services Division or the Board of AGLC.

[36] A new casino licence, ability to expand a casino facility or any gaming licence is a privilege and not a right. AGLC has the overarching legislative scheme to handle casino licences and has the discretion to make procedures and policies to handle these applications.

[37] AGLC is the sole gaming regulator in Alberta and, under the Act, has the authority to establish procedures and policies as they pertain to gaming in Alberta. It was within the scope of AGLC to permit or deny the applications from Century Casinos. It is the responsibility of AGLC to uphold the integrity of gaming activities and public interest of Albertans while balancing competing interests and the impact of changes in the gaming community on the public and stakeholders. As such, the decision to deny an application is within AGLC's statutory powers.

[38] The Regulatory Services Division could have chosen to deny the applications without specific policies in place for this type of enhancement to RECs or could have considered the applications against Section 14 of the CTCOG: Application Process for New Licensed Casino Facilities. The Regulatory Services Division chose to proceed using Section 15.2 of the CTCOG. These decisions are within the scope of the discretion of AGLC.

IV. Century Casinos Evidence

[39] The Applicants did not call any witnesses, as agreed between the parties, as a result of having exchanged documentary evidence in advance. Representatives for the Applicants, Gregory Sim and Britt Tetz, Field Law, provided written evidence (Exhibits 2, 4 and 5) on behalf of Century Casinos and spoke to those submissions at the hearing.

[40] The Applicants suggest that the Regulatory Services Division and the Board of AGLC failed to consider and make their decision based on the relevant factors set out in the CTCOG and that such failure amounts to an abuse of discretion by the Board. The Applicants submit that the decision was unfair and unreasonable and that AGLC neglected to follow the rules and policies it created.

[41] The Applicants assert that the CTCOG, although referred to as “guidelines” are, in fact, rules. These are not mere suggestions but are rules and procedures that need to be followed. Under the authority of the Act, AGLC developed the policies contained in the CTCOG and the public is entitled to expect that the Regulatory Services Division of AGLC will strictly adhere to these policies when considering applications.

[42] As Section 15.2 of the CTCOG was selected as the guide for consideration of the applications from Century Casinos, the terms contained in that section should be relied upon exclusively. By deviating from this section during the consideration of the applications, there was a negative effect on the Applicants and the process became unfair.

[43] AGLC has the discretion and the authority to create policies; Century Casino’s applications could have been denied until the AGLC was able to create a policy that would outline the requirements for converting a REC to a casino.

[44] The Applicants assert that no document or evidence was presented by the Regulatory Services Division that communicated its intent to take a “best fit approach” in the use of Section 15.2 of the CTCOG or that the Regulatory Services Division would “pick and choose” which rules to rely upon at different points in the process and that there may be deviations from Section 15.2 of the CTCOG throughout the process.

[45] Section 15.2.2 of the CTCOG lays out the three steps: Initial Assessment, Community Support and Approval. This provision says that approval may only be issued after the requirements in the steps “are completed in order.” The Applicants suggest that the inclusion of the words “in order” in the CTCOG is intentional and the writer of these policies intended the process to be a sequential, stepwise process.

[46] Once the application is deemed to have merit and moves from Step 1 to Step 2, the Applicants submit that it does not make sense at Step 2 to go backwards and reconsider factors that were already assessed in Step 1. The Applicants agree that approval at Step 1 does not mean that the applications will be successful but they are of the opinion that it is inefficient and unfair to reconsider factors that were considered in Step 1 again in Step 2.

[47] If the process was not sequential in nature and the Board could reconsider factors at any point, applicants would never have certainty that their application was truly progressing. The Applicants are of the opinion that this is not in the best interest of Albertans and cannot be the intention of the CTCOG.

[48] Section 15.2.7 of the CTCOG outlines the factors that are considered at Step 1. The Regulatory Services Division made considerations based on these factors, sought clarification from the Applicants when necessary (Exhibit 2, Tabs A5, A9, A12, and A14 to A17) and identified some financial concerns; specifically, the decline in the General Revenue Fund. Despite the drawbacks identified, the Regulatory Services Division determined the applications to have merit and recommended their approval and the initiation of Step 2.

[49] Stephen Kiss, Director of Audit Services of the Regulatory Services Division, emailed Geoff Smith, Director of Century Casinos, on May 12, 2021 (Exhibit 2, Tab A12) advising that “if and when” the applications are approved to move to Step 2 the Regulatory Services Division would “be in touch with Century Casinos so that they can proceed with posting of the public notices.” The Applicants argue that this communication suggests that approval at Step 1 will trigger Step 2 and that if the steps were overlapping there would be no reason to wait for approval in Step 1 to proceed to Step 2 actions.

[50] The Applicants are of the opinion that the May 12, 2021 email communication (Exhibit 2, Tab A12) shows that they had a legitimate reason to believe the Step 1 factors would not be revisited.

[51] The Applicants are of the opinion that it does not make sense to undermine the work done at Step 1 by looking back to those same factors once community support is sought in Step 2. Completing further financial analyses as a result of feedback from the community would be a waste of time and resources. The purpose of Step 2 falls under the duty to consult. The Applicants suggest that communities have to know what is going on and that although their feedback will likely include financial impacts on their business, the financial impacts will not need to be reconsidered because the Regulatory Services Division will have already completed the financial analysis and will already be aware of the impacts.


[52] With respect to the community support received, the Applicants maintain that the definition for community found in Section 15.1.3 of the CTCOG is the definition that ought to be used as it is stated to be the intended definition throughout Section 15 of the CTCOG. AGLC has defined whose input should be considered; those located within the municipality, Metis settlement or Indian Reserve or council and not operators from across the province or in adjacent communities.

[53] The Applicants suggest that the Regulatory Services Division relied on the definition for community found in Section 15.3 of the CTCOG, dealing with the relocation of a casino and highlighted that this further demonstrates a deviation from Section 15.2 of the CTCOG.

[54] Section 3 of the Regulation gives AGLC broad authority to determine the community and, the Applicant argues, that AGLC did that in the creation of the CTCOG so those policies should be relied on. The breadth of the definition used cannot change based on the particular application.

[55] The Applicants posted public notices as required (Exhibit 1, Tab 7) and submitted to the Regulatory Services Division the responses from the community in the form of Letters of Support (Exhibit 2, Tab A7, A8, A11).

[56] During the hearing, Century Casinos drew the Panel’s attention to a specific Letter of Support



[57] The Regulatory Services Division did not follow the same definition and provided notice to all operators (Exhibit 2, Tab A13) and sought input from communities adjacent to the respective RECs.

[58] Many of the operators raised concerns related to the financial impacts of allowing the RECs to transition into casinos with the addition of the table games.

[59] Century Casinos is of the opinion that the Regulatory Services Division deviated from Section 15.2 of the CTCOG in canvassing these areas and that the financial impacts had already been considered in Step 1 and thoroughly analyzed by the Regulatory Services Division.

[60] The Board of AGLC considered the initial assessments again at Step 2 and made the decision to refuse to approve the applications to proceed, as detailed in the decision letter of November 22, 2021 (Exhibit 2, Tab 18). Century Casinos points out that the reasons for decision included in the letter included factors that had been assessed at Step 1. If those factors justify terminating the applications at Step 2, then the applications should not have been approved at Step 1.

[61] Century Casinos also asserts that the Regulatory Services Division advised them by letter (Exhibit 2, Tab A15) outlining the objections received during Step 2. The letter stated that these objections “form part of a package that will be reviewed by the Board should the application move to Step 3 – Approval.” The Applicants are of the opinion that the process was not followed and that the objections should not have been reviewed by the Board of AGLC until Step 3 because of the communication provided to the Applicants.

[62] Century Casinos provided a lengthy response to the objections (Exhibit 2, Tab A16) but these responses were not discussed or mentioned in the decision letter of November 22, 2021.

[63] The Applicants are of the opinion that the decision letter did not contain reasoning about deviation from the three-step process and that the reasons given are inadequate.

[64] Century Casinos acknowledges that AGLC is a regulatory body and that, in the interest of Albertans, they must consider all factors presented in an application. That said, it would be impossible for an applicant to ever be comfortable proceeding with an application knowing that approval at one stage did not mean the factors considered and approved at that stage could not be revisited. This suggests that an application for a gaming or casino licence could be rejected at any step despite the time, capital and energy investments made and financial risks the applicant may have already taken on during the development. Century Casinos is of the opinion that prospective applicants will be disincentivized from taking on the necessary permits, leasing, acquisitions or financial risks if the Regulatory Services Division can revisit approved items and change their decision at any step as a result of new developments or changes in the market area.

[65] The Applicants clarified for the Panel that they recognize it is reasonable for the Regulatory Services Division and the Board of AGLC to reconsider factors as a result of a substantial change in the market, but state that the CTCOG allows for this in Step 3, at Section 15.3.30 of the CTCOG. The Applicants acknowledge that, as a regulatory body, it is necessary for AGLC to reconsider an application in light of substantial market, informational or environmental changes before final approval but suggest

that the CTCOG sets out the appropriate time to do so; in Step 3. The Applicants propose that these “checks and balances” need not occur between Step 1 and Step 2 of the process.

V. Summation

Regulatory Services Division

[66] The Regulatory Services Division asserts in their written submissions (Exhibit 3) that the Board of AGLC did not breach relevant statutes or policy in rendering the decision to discontinue the applications. The Board of AGLC acted within its powers and fairly and reasonably considered the totality of the application materials before rendering the decision.

[67] The Act and the Regulations convey wide discretion upon the Board to determine the casino expansion application process, to continue or discontinue applications, to define “community” and consider the views from operators and municipalities within a market area and adjacent community.

[68] With respect to the definition of community, Ms. Chan confirms that there is no definition of market area or of geographic location contained in Section 15.2 of the CTCOG, however, Sections 3 and 4 of the Regulation indicate that AGLC has the discretion to determine the geographical boundaries in order to define a community.

[69] In response to the claims by the Applicants that the Regulatory Services Division was “picking and choosing” which sections of the CTCOG and Regulation to rely on at different stages of assessment, the Regulatory Services Division submits that is not the case. Ms. Chan advised the Panel that the Regulatory Services Division notified the Applicants upon receipt of their applications that the CTCOG does not contain policies that perfectly align with applications of this type. To give the applications fair opportunity for consideration, the Regulatory Services Division elected to utilize a “best fit approach” using Section 15.2 of the CTCOG as a guideline to consider the novel applications. The terms of that section were used where possible, with the Regulation being used to fill in any gaps. AGLC has full discretion to utilize the policies and the Regulation in conjunction to assess the applications.

[70] The Regulatory Services Division is of the opinion that they did not breach Section 15.2 of the CTCOG by considering factors in Step 1 and then denying the application in Step 2 based on some of these same factors brought up by the community.

[71] Ms. Chan agreed that the three-step process is sequential in nature but argued that the Regulatory Services Division should not be barred from reconsidering factors at any step in the process. If the objections received from the community at Step 2 included objections that raised concerns with the financial impact or cannibalization that had already been considered in Step 1 and Regulatory Services could not go back to reconsider these drawbacks, then the views of the objectors would hold no weight. Reaching out for community support or input would be a meaningless exercise if the viewpoints could not be fully considered at this step.

[72] Ms. Chan submits that the Regulatory Services Division clearly acknowledged in both the June 11, 2021 and November 18, 2021 Requests for Decision (Exhibit 1, Tabs 6 and 5) that there was no specific AGLC policy to address an REC wishing to also operate table games. The June 11, 2021 Request

for Decision (Exhibit 1, Tab 6) indicates departures from Section 15.2 of the CTCOG during the assessment process. Specifically, that new casino applications need to be approved by the Board whereas certain steps in an application for expansion can be approved by way of delegated authority to the Vice President of Regulatory Services. In the interest of being thorough, the Regulatory Services Division sought Board approval throughout the application process. This demonstrates that Section 15.2 of the CTCOG was utilized as much as possible throughout the process and any departures from that section have been explained.

[73] The Regulatory Services Division maintains that a fair process was used to allow the applications to be accepted and assessed.

[74] The Regulatory Services Division respectfully requests that the decision by the Board of AGLC to discontinue the applications be upheld.

Century Casinos

[75] Mr. Sim responded to the submission by the Regulatory Services Division regarding the purpose of accepting community feedback and the importance of being able to consider all input, regardless of which step of the process the feedback relates to. The Applicants are not advocating that the viewpoints from the community should not be fully considered. Mr. Sim echoed the Applicants' response submissions (Exhibit 5) and reiterated that the community from which input is provided needs to be narrowed and, therefore, the type of feedback received should not come from other casino operators and therefore likely would not include in-depth financial evaluations.

[76] The Regulatory Services Division conducts its own financial analysis and makes a decision based on public interest and determines whether the application has merit at Step 1. Mr. Sim suggests that the purpose of Step 2 as outlined in Section 15.2.2 of the CTCOG is to seek input from the community only as community is defined in Section 15.1.3 of the CTCOG: a municipality, a Metis Settlement or an Indian Reserve as determined by Indigenous and Northern Affairs Canada located within the provincial boundaries of Alberta.

[77] The Applicants submit that casino operators that are not located within the community as defined above should not be canvassed. Mr. Sim suggests that Step 2 is not about financial analysis, but rather about reaching out to the community to find out if there are general concerns relating to an expansion in the area. The feedback, if sought from the community as defined, will not include complex financial impacts but rather general comments of support or objections.

[78] The Applicants request that the decision of the Board be replaced with a decision that:

- the Applications are approved pursuant to Section 15.2.18 of the CTCOG (approval of Step 2); and
- conditional upon the Applicants' fulfillment of the requirements set out in Section 15.2.23 of the CTCOG, the Applicants are also approved pursuant to Section 15.2.24 of the CTCOG (approval of Step 3).

[79] Mr. Sim clarified that the Applicants are seeking approval at Step 2 but that they are also seeking approval at Step 3, recognizing that any approval at Step 3 would be conditional and subject to any conditions that ought to be imposed under section 15.2.23 of the CTCOG.

VI. Analysis

[80] The Panel determined that the arguments made at the hearing applied to both applications and there were no notable differences highlighted with respect to argument or relief sought by either Century Mile Racetrack and Casino or Century Downs Racetrack and Casino. As such, the analysis herein reflects the Panel's reasoning for decision as it applies to both applications.

[81] The Panel considered the written submissions of both parties and relied on the information that the representatives for each party was able to provide orally at the hearing.

[82] The Board of AGLC is governed by the Act and Regulation. If any policies conflict or are inconsistent with the Act or Regulation, the Act or Regulation prevail to the extent of the conflict or inconsistency.

[83] The Panel considered all arguments and evidence provided by both the Regulatory Services Division and the Applicants and particularly considered the following points of contention in their deliberations:

- the multi-step process through which an application flows;
- the definition of community; and
- the consideration of financial impacts of the proposed enhancements (cannibalization and loss of revenue).

[84] The Panel found no strong evidence presented that determined the multi-step process to be a closed-gate, sequential process. Approval at Step 1 signifies that the application has merit and will move to Step 2 but does not signify a guarantee of overall approval. Section 15.2.8 of the CTCOG explicitly states that success in an initial assessment "does not assure the level of success or support of the casino expansion." This inherently suggests that the application can be rejected later. The Panel does not agree with the Applicants' interpretation of the process.

[85] With respect to the definition of community, the Panel agrees that Sections 3 and 4 of the Regulation allow the Board of AGLC latitude to determine the geographical area which constitutes a community in accordance with the CTCOG and from whom they may receive objections with respect to a licence or registration. Although the Applicants formulated their definition of community using the definition found at Section 15.1.3 of the CTCOG, the Panel leans on the Act and Regulation to deal with the subjectivity of the definition and did not agree with the Applicants' interpretation of the same.

[86] The Board of AGLC must assess opportunities with the interests of Albertans in mind and must consider all views from the gaming community across the province. As such, notice of new applications must be provided to any members of the gaming community in Alberta that may be impacted. Such notice is necessary to fulfill AGLC's mandate to protect the public and maintain the integrity of gaming activities by creating an equal platform among operators.

[87] The Panel finds that the Regulatory Services Division made it clear to the Applicants when their proposal was received that there were no existing policies that could seamlessly guide the application process for the enhancement of the RECs. The Panel finds that the Regulatory Services Division went above and beyond the existing policies to allow for consideration of these novel applications. The Regulatory Services Division could have denied the applications at the outset of the process on the basis of the non-existent policies. Instead, Regulatory Services acted in good faith and gave the Applicants fair opportunity to proceed with their applications with the understanding that the applications would be considered using a “best fit approach” with Section 15.2 of the CTCOG.

[88] The Panel found that the Applicants were unable to point to a section of the guidelines that would have been more appropriate than Section 15.2 of the CTCOG for assessing these applications.

[89] The Panel is of the opinion that the November 22, 2021 letter containing the decision of the Board (Exhibit 1, Tab 2 and Exhibit 2, Tab A18) provided reasons for the decision, as required by Section 15.2.21 of the CTCOG. The Applicants had opportunity to seek clarification upon receipt of the decision if they required more information about the reasons for the decision.

[90] The arguments presented by the Applicants at the hearing are based on a narrow interpretation of individual policies as opposed to consideration of the intent of the policies in a broad sense. The terms found in the CTCOG are intended to be broader in scope and the overall essence of the policies should be considered.

[91] Further, the Panel finds that the letter of support [REDACTED] illustrates support for the proposed implementation of live table games at both facilities, subject to “no changes being made to the Funding Agreement [REDACTED] [REDACTED]

[92] As evidenced in the Request for Decision dated November 18, 2021 (Exhibit 1, Tab 5), converting to a Casino Facility Licence to accommodate the addition of live table games to the REC will reduce funds available to the general revenue fund [REDACTED] (due to reallocation of slot revenues to charities and/or declines in slot revenues). [REDACTED] to maintain the fund allocation from RECs it currently receives, and charities are to benefit then the losses would be reflected in the general revenue fund.

[93] Section 3(c) of the Act states that one of the objects of the Commission is to carry out the functions respecting gaming delegated to it by the Lieutenant Governor in Council under the *Criminal Code* (Canada) or conferred on it by the Act. Section 12(1) of the Act sets out the Board’s responsibility of ensuring that the powers and duties of the Commission are appropriately carried out and allows the Board the power to establish policies of the Commission. As reflected in these sections and throughout the Act, the Board of AGLC has the ultimate discretion to create policies and carry out functions respecting gaming as the sole regulator of gaming activities in Alberta. The legislation also grants the Board the authority to issue a licence or to refuse to issue a licence based on criteria as highlighted in Section 37(1) of the Act, including whether the Board considers it appropriate to do so (Section 37(1)(a)).

VII. Finding

[94] After consideration of the evidence provided and for the reasons noted in the analysis above, the Panel finds no reason to alter the application process used in the first instance by the Board of AGLC which led to a refusal to issue casino licenses to the Applicants.

[95] In accordance with Section 94(7)(a), the Panel confirms the original decision of the Board of AGLC to deny the advancement of the applications from Century Casinos and refuse to issue casino licences to transition two of their Racing Entertainment Centres (RECs) to full-service casinos with the addition of table games.

Signed at St. Albert, this 13th day of April, 2022

A handwritten signature in blue ink, appearing to read "Len Rhodes". The signature is stylized and cursive.

Len Rhodes, Presiding Member, Hearing Panel